

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Petitioner,

- v. -

ANTHEM, INC.,

Respondent.
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18 Misc. 379 (GBD)(KNF)

STIPULATION AND ORDER

WHEREAS, on August 22, 2018, petitioner the United States of America (the “Government”) served a civil investigative demand on respondent Anthem, Inc. (“Anthem”) pursuant to the False Claims Act, 31 U.S.C. § 3729 *et seq.* (the “FCA”), seeking oral testimony from Anthem regarding five designated topics (“CID 18-46”);¹

WHEREAS, Topic 3(iii) in CID 18-46 seeks testimony regarding internal auditing procedures used by Anthem to determine whether the diagnosis codes that Anthem submitted to CMS for risk-adjustment purposes were, or were not, documented in medical records, and Topics 4 and 5 in CID 18-46 seek testimony regarding the policies, procedures, training and personnel that Anthem relied on to ensure that diagnosis codes Anthem reported to CMS for risk-adjustment purposes were valid and supported by medical records;

WHEREAS, on August 20, 2018, the Government commenced the above-captioned proceeding to petition for enforcement of CID 18-46 — namely, for an order directing Anthem to provide testimony responsive to Topics 3(iii), 4, and 5;

WHEREAS, on November 13, 2018, Magistrate Judge Fox issued a Report and Recommendation (the “R&R”), which recommended granting the Government’s petition;

¹ A redacted copy of CID 18-46 is docketed as ECF entry 22-1. This Stipulation and Order incorporates the definitions set forth in CID 18-46.

WHEREAS, Anthem filed objections to the R&R on November 30, 2018, and the Government responded to Anthem's objections on December 20, 2018;

WHEREAS, at the hearing before the Court on January 24, 2019, Anthem offered to provide testimony responsive to Topics 3(iii), 4, and 5 in CID 18-46, subject to certain clarifications and limitations, which Anthem specified by letter on January 25, 2019;

WHEREAS, in connection with its January 25 proposal, Anthem represented to the Government that, based on CMS average monthly enrollment data for Payment Year 2018, Anthem (i) operated approximately 27 Medicare Advantage plans through its centralized corporate functions (the "Anthem Corporate Part C Plans"), which covered approximately 660,000 Medicare beneficiaries, and (ii) separately operated approximately eight Medicare Advantage plans through four subsidiaries (the "Anthem Subsidiary Part C Plans"), which covered approximately 350,000 Medicare beneficiaries;

WHEREAS, in connection with its January 25 proposal, Anthem also represented that, as result of management changes that occurred in approximately 2013, it will require additional time to prepare one or more witnesses to provide testimony regarding the policies, procedures, training and personnel relevant to Topics 3(iii), 4, and 5 in CID 18-46 for the period prior to January 1, 2013;

WHEREAS, the Government and Anthem have further conferred regarding Anthem's January 25 proposal and agreed on a set of definitions and limitations;

IT IS HEREBY STIPULATED, AGREED, and ORDERED that:

1. The R&R is adopted subject to the terms of this Stipulation and Order and the limitations and definitions herein.

2. No later than March 13, 2019, Anthem shall produce one or more witnesses to provide testimony responsive to Topics 3(iii), 4, and 5 in CID 18-46. More specifically, the

witness(es) shall provide an overview of the relevant policies, procedures, training and personnel at Anthem as follows:

- a. With regard to Topic 3(iii), the witness(es) shall, at a minimum, (i) identify the relevant internal data validation procedures, (ii) summarize the purpose and function of each relevant procedure, (iii) identify the type and location of the results of each relevant procedure; and (iv) identify the Anthem personnel responsible for the relevant internal data validation procedures.
 - b. With regard to Topics 4 and 5,² the witness(es) shall, at a minimum, (i) identify the relevant policies, procedures, and trainings; (ii) summarize the purpose and function of each policy, procedure, or training; (iii) identify the type and location of results of each data validation procedure; and (iv) identify the roles and responsibilities of the Anthem personnel responsible for implementing these policies, procedures, and trainings.
3. The testimony to be provided pursuant to Paragraph 2 shall be limited as follows:
- a. The testimony shall address policies, procedures, training, and personnel for the period of January 1, 2013, through December 31, 2018;
 - b. The testimony shall address the policies, procedures, training, and personnel at Anthem's centralized corporate level relating to the Anthem Corporate Part C Plans;
 - c. The testimony shall relate to diagnosis codes submitted by Anthem based on (i) data reported by healthcare providers on claims and (ii) data generated by the Anthem retrospective chart review program, but not data generated by other supplemental programs like Anthem's house call program;
 - d. The testimony shall address the policies, procedures, training, and personnel at all departments or groups at Anthem whose functions relate to Medicare

² For purposes of this Stipulation and Order, the Government and Anthem agree that the term "valid and supported by the medical records" in Topics 4 and 5 in CID 18-46 shall mean that a diagnosis code was processed and submitted consistent with CMS program requirements and satisfies applicable CMS and industry coding standards.

risk adjustment, but not the departments or groups at Anthem whose functions do not relate to Medicare risk adjustment;

- e. With regard to Topic 3(iii), the testimony shall relate to the 4 sample beneficiaries that the Government identified to Anthem on May 4, 2018.

4. Unless the Government agrees to forego such testimony, or the parties agree to an alternative schedule, Anthem shall produce one or more witnesses to provide testimony responsive to Topics 3(iii), 4, and 5 – for the period before January 1, 2013, and subject to the limitations set forth in sub-paragraphs 3(b) through 3(e) – no later than May 10, 2019.

5. The Government and Anthem shall confer in good faith regarding the need for testimony responsive to Topics 3(iii), 4, and 5 in relation to the Anthem Subsidiary Part C Plans after their acquisition by Anthem. In the event that the Government determines that such testimony is necessary, and unless the parties agree to an alternative schedule for these depositions, Anthem shall produce one or more witnesses to provide such testimony – subject to the limitations set forth in sub-paragraphs 3(c) through 3(e) – no later than seven weeks after the government informs Anthem that it requires such testimony or June 7, 2019, whichever is later.

6. Subject to this paragraph, this action shall be voluntarily dismissed without prejudice. However, in the event that Anthem fails to comply with any deadline or term in Paragraphs 1 through 5 above, and if the parties cannot agree on a mutually acceptable alternative, the Government shall be entitled to reinstate this action to seek enforcement of this Order by letter-motion and to seek such other relief as may be warranted.

For the Government:

GEOFFREY S. BERMAN
United States Attorney

By: 

LI YU
PETER ARONOFF
RACHAEL DOUD
Assistant United States Attorneys
86 Chambers Street, 3rd Floor
New York, New York 10007

DATED: January 31, 2019
New York, New York

For Anthem:

O'MELVENY & MYERS LLP

By: 

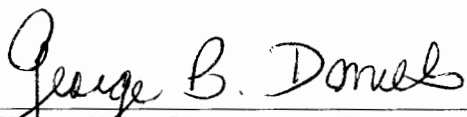
JAMES BOWMAN, Esq.
DAVID DEATON, Esq.
VALERIE COHEN, Esq.
ANDREA SAVDIE, Esq.
400 South Hope Street
Los Angeles, CA 90071

DATED: January 31, 2019
Los Angeles, California

Date: February __, 2019

FEB 04 2019

SO ORDERED:


HON. GEORGE B. DANIELS
UNITED STATES DISTRICT JUDGE